

1 Richard Sax, Esq. SBN 80632
2 LAW OFFICES OF RICHARD SAX
3 448 Sebastopol Avenue
4 Santa Rosa, CA 95401
5 Telephone: (707) 525-1824
6 Facsimile: (707) 525-8119
7 *Richard@rsaxlaw.com*

8 Attorney for Marvin E. McDougal Jr.

9 **UNITED STATES BANKRUPTCY COURT**
10 **SOUTHERN DISTRICT OF NEW YORK**

11 In re:

12
13
14 RESIDENTIAL CAPITAL, LLC, et al.,
15
16 Debtors.

Case No. 12-12020 (MG)

Chapter 11

Jointly Administered

RESPONSE TO FOURTH OMNIBUS
OBJECTION TO CLAIMS (LATE
FILED CLAIMS)

Hearing Date: July 15, 2013

Time: 11:00 a.m. (PDT)

Courtroom: 501

Judge: Hon. Martin Glenn

25
26 **RESPONSE OF MARVIN E. MCDOUGAL JR. TO FOURTH OMNIBUS**
27 **OBJECTION TO CLAIMS (LATE FILED CLAIMS)**

28
29 1. On November 7, 2012, two days before the November 9, 2012 deadline
30 for filing Proofs of Claim in this matter, Creditor Marvin E. McDougal Jr.
31 ("McDougal") filed a timely Proof of Claim against Debtor Residential Capital, LLC, et
32 al. (Exhibit 1, Proof of Claim with attached Assignment of Deed of Trust recorded in
33 Marin County, California on August 23, 2010). McDougal filed an Amended Proof of
34 claim on November 26, 2012 which should relate back to the original timely filed Proof
35 of Claim.
36

1 2. The amount of McDougal's timely Proof of Claim is \$1,650,000.00, as of
2 the date this case was filed (Exhibit 1, No. 1).

3 3. The basis for McDougal's timely Proof of Claim is wrongful foreclosure
4 and invalid assignment of note and deed of trust (Exhibit 1, No. 2).

5 4. McDougal's timely Proof of Claim, filed on November 7, 2012, was
6 received by ResCap Claims Processing Center on that same date, and assigned claim
7 number 2864 (Exhibit 2, Proof of Claim Confirmation).

8 5. On November 26, 2012, McDougal filed an Amended Proof of Claim
9 against Debtor Residential Capital, LLC, et al. (Exhibit 3, Proof of Claim with attached
10 Assignment of Deed of Trust recorded in Marin County, California on August 23,
11 2010).

12 6. McDougal's Amended Proof of Claim, filed on November 26, 2012, was
13 received by ResCap Claims Processing Center on that same date, and assigned claim
14 number 5892 in the Claims Register (Exhibit 4, copy of Claims Register, p. 55 of 247).

15 7. The amount of McDougal's Amended Proof of Claim is \$1,650,000.00, as
16 of the date that this case was filed, plus attorney's fees, or according to proof (Exhibit 3,
17 No. 1).

18 8. The basis for McDougal's Amended Proof of Claim is wrongful
19 foreclosure, invalid assignment of note and deed of trust, equitable subrogation, and
20 fraud (Exhibit 3, No. 2).


21 9. Thus, the only difference between McDougal's timely Proof of Claim,
22 filed on November 7, 2012 (Exhibit 1), and his Amended Proof of Claim, filed on
23 November 26, 2012 (Exhibit 3), is the addition of equitable subrogation and fraud to the
24 Basis for Claim, and a request for attorney's fees.

25 10. McDougal contends that his Amended Proof of Claim, filed on
26 November 26, 2012, relates back to his timely Proof of Claim, filed on November 7,
27 2012.

1 11. Therefore, McDougal opposes the Objection to his Amended Proof of
2 Claim, filed on November 26, 2012 and request that the Objection be denied and that
3 the Amended Proof Of Claim relate back to the original Proof of claim filed on
4 November 7, 2012.
5

6 12. The name, address, and telephone number of the person possessing
7 ultimate authority to reconcile, settle, or otherwise resolve McDougal's claim on his
8 behalf is attorney Richard Sax, 448 Sebastopol Avenue, Santa Rosa, California 95401,
9 telephone: 707-525-1824, fax: 707-525-8119, e-mail: Richard@rsaxlaw.com.
10

11
12
13 Dated: July 8, 2013

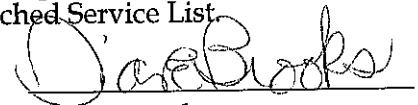

Richard Sax, Attorney for Creditor
Marvin McDougal

PROOF OF SERVICE

I declare that: I am employed in the County of Sonoma, California. I am over the age of eighteen (18) years and not a party to the within case; my business address is 448 Sebastopol Ave, Santa Rosa, CA 95401. On July 8, 2013 I served **Response to Fourth Omnibus Objection to Claims (Late Filed Claims)** on the interested parties in said cause, addressed as follows:

SEE ATTACHED SERVICE LIST

- (XX) BY OVERNIGHT DELIVERY, PURSUANT TO CCP § 1013 (c): I placed such sealed envelope for collection and mailing by overnight delivery at Santa Rosa, California, within the ordinary business practices. I am readily familiar with the practices of the Law Offices of Richard Sax, said practice being that in the ordinary course of business; correspondence is either picked up by or delivered to the delivery company the same day as it is placed for processing.
- (XX) BY ELECTRONIC MAIL: I caused the above-described document to be transmitted by electronic mail to the parties at the number(s) indicated after the address(es) noted above. The transmission was reported as complete and without error.
- () BY MAIL: I placed said document in a sealed envelope, with postage thereon fully prepaid for first class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practice of The Law Offices of Richard Sax for the processing of correspondence, said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.
- (XX) BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the parties at the address(es) noted on the attached Service List.


Diane Brooks

SERVICE LIST

**United States Bankruptcy Court, Southern District of New York
Case Number 12-12020 (MG)**

Chambers of the Hon. Martin Glenn
One Bowling Green
New York, New York 10004
Courtroom 501

Courtesy Copies (Two) By Personal Service and Overnight Delivery

Morrison & Foerster LLP
1290 Avenue of the Americas
New York, NY 10104-0050
Attn: Gary S. Lee, Esq.
Norman S. Rosenbaum, Esq.
Jordan A. Wishnew, Esq.
glee@mofo.com
nrosenbaum@mofo.com
jwishnew@mofo.com

Attorneys for Debtors

By Electronic Mail

Kramer Levin Naftalis & Frankel LLP
1117 Avenue of the Americas
New York, NY 10036
Attn: Kenneth H. Eckstein, Esq.
Douglas H. Mannal, Esq.
keckstein@kramerlevin.com
dmannal@kramerlevin.com

Attorneys for the Official
Committee of Unsecured Creditors

By Electronic Mail